

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 419 be amended to read as follows:

- 1 Page 1, delete lines 15 through 17, begin a new paragraph and
- 2 insert:
- 3 "SECTION 3. IC 26-1-1-201 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 201. Subject to
- 5 additional definitions contained in IC 26-1-2 through IC 26-1-10 which
- 6 are applicable to specific provisions, and unless the context otherwise
- 7 requires, in IC 26-1:
- 8 (1) "Action" in the sense of a judicial proceeding includes
- 9 recoupment, counterclaim, setoff, suit in equity, and any other
- 10 proceedings in which rights are determined.
- 11 (2) "Aggrieved party" means a party entitled to resort to a
- 12 remedy.
- 13 (3) "Agreement" means the bargain of the parties in fact as found
- 14 in their language or by implication from other circumstances
- 15 including course of dealing or usage of trade or course of
- 16 performance as provided in IC 26-1-1-205. ~~and IC 26-1-2-208.~~
- 17 Whether an agreement has legal consequences is determined by
- 18 the provisions of IC 26-1, if applicable; otherwise by the law of
- 19 contracts (IC 26-1-1-103). (Compare "Contract".)
- 20 (4) "Bank" means any person engaged in the business of
- 21 banking.
- 22 (5) "Bearer" means the person:
- 23 **(A) in control of a negotiable electronic document of**
- 24 **title; or**
- 25 **(B) in possession of an a negotiable instrument, a**
- 26 **negotiable tangible document of title, or a certificated**
- 27 **security payable to bearer or endorsed in blank.**
- 28 (6) "Bill of lading" means a document **of title** evidencing the
- 29 receipt of goods for shipment issued by a person engaged in the
- 30 business of **directly or indirectly** transporting or forwarding
- 31 goods. ~~and The term does not include a warehouse receipt.~~
- 32 **The term** includes an airbill. "Airbill" means a document

1 serving for air transportation as a bill of lading does for marine
2 or rail transportation, and includes an air consignment note or air
3 waybill.

4 (7) "Branch" includes a separately incorporated foreign branch
5 of a bank.

6 (8) "Burden of establishing" a fact means the burden of
7 persuading the triers of fact that the existence of the fact is more
8 probable than its nonexistence.

9 (9) "Buyer in ordinary course of business" means a person that
10 buys goods in good faith without knowledge that the sale violates
11 the rights of another person in the goods, and in the ordinary
12 course from a person, other than a pawnbroker, in the business
13 of selling goods of that kind. A person buys goods in the
14 ordinary course of business if the sale to the person comports
15 with the usual or customary practices in the kind of business in
16 which the seller is engaged or with the seller's own usual or
17 customary practices. A person that sells oil, gas, or other
18 minerals at the wellhead or minehead is a person in the business
19 of selling goods of that kind. A buyer in ordinary course of
20 business may buy for cash, by exchange of other property, or on
21 secured or unsecured credit, and may require goods or
22 documents of title under a preexisting contract for sale. Only a
23 buyer that takes possession of the goods or has a right to recover
24 the goods from that seller under IC 26-1-2 may be a buyer in
25 ordinary course of business. A person that acquires goods in a
26 transfer in bulk or as security for or total or partial satisfaction of
27 a money debt is not a buyer in ordinary course of business.

28 (10) "Conspicuous". A term or clause is conspicuous when it is
29 so written that a reasonable person against whom it is to operate
30 ought to have noticed it. A printed heading in capitals (as:
31 NONNEGOTIABLE BILL OF LADING) is conspicuous.
32 Language in the body of a form is conspicuous if it is in larger or
33 other contrasting type or color. But in a telegram any stated term
34 is conspicuous. Whether a term or clause is conspicuous or not
35 is for decision by the court.

36 (11) "Contract" means the total legal obligation which results
37 from the parties' agreement as affected by this Act and any other
38 applicable rules of law. (Compare "Agreement".)

39 (12) "Creditor" includes a general creditor, a secured creditor, a
40 lien creditor and any representative of creditors, including an
41 assignee for the benefit of creditors, a trustee in bankruptcy, a
42 receiver in equity, and an executor or administrator of an
43 insolvent debtor's or assignor's estate.

44 (13) "Defendant" includes a person in the position of defendant
45 in a cross-action or counterclaim.

46 (14) "Delivery" means the following:

47 (A) With respect to an electronic document of title,
48 voluntary transfer of control.

49 (B) With respect to instruments, tangible documents of
50 title, chattel paper, or certificated securities, means
51 voluntary transfer of possession.

(15) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods and also any other document, which means a record that:~~

(A) in the regular course of business or financing, is treated as adequately evidencing that the person in possession **or control** of ~~it the record~~ is entitled to receive, **control**, hold, and dispose of the ~~document record~~ and the goods it covers; ~~To be a document of title, a document must purport and~~

(B) **purports** to be issued by or addressed to a bailee and ~~purport purports~~ to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of IC 26-1 to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" **with respect to means:**

(A) **the person in possession of** a negotiable instrument ~~means the person in possession if the instrument that is payable either to bearer or in the case of an instrument, payable to an identified person if the identified person is in possession of the instrument; "Holder" with respect to~~

(B) **the person in possession of a negotiable tangible document of title** ~~means the person in possession if the goods are deliverable either to bearer or to the order of the person in possession; or~~

(C) **the person in control of a negotiable electronic document of title.**

(21) To "honor" is to pay or to accept and pay or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay ~~his~~ **the person's** debts in the ordinary course of business or cannot pay ~~his the person's~~ debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

(25) A person has "notice" of a fact when:

(a) ~~he the person~~ has actual knowledge of it;

(b) ~~he the person~~ has received a notice or notification of it;

or

(c) from all the facts and circumstances known to ~~him the person~~ at the time in question, ~~he the person~~ has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when ~~he the person~~ has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by IC 26-1.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to ~~his the person's~~ attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by ~~him the person~~ as the place for receipt of such communications.

(27) Notice, knowledge, or a notice of notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction and, in any event, from the time when it would have been brought to ~~his the person's~~ attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of ~~his the person's~~ regular duties or unless ~~he the person~~ has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint

or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within IC 26-1.

(30) "Person" includes an individual or an organization. (See IC 26-1-1-102.)

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(33a) "Registered mail" includes certified mail.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to IC 26-1-9.1. The special property interest of a buyer of goods on identification of such goods to a contract for sale under IC 26-1-2-401 is not a security interest, but a buyer may also acquire a security interest by complying with IC 26-1-9.1. Except as otherwise provided in IC 26-1-2-505, the right of a seller or lessor of goods under IC 26-1-2 or IC 26-1-2.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with IC 26-1-9.1. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (IC 26-1-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the

1 remaining economic life of the goods for no additional
 2 consideration or nominal additional consideration upon
 3 compliance with the lease agreement; or

4 (d) the lessee has an option to become the owner of the
 5 goods for no additional consideration or nominal additional
 6 consideration upon compliance with the lease agreement.

7 A transaction does not create a security interest merely because
 8 it provides that:

9 (a) the present value of the consideration the lessee is
 10 obligated to pay the lessor for the right to possession and
 11 use of the goods is substantially equal to or is greater than
 12 the fair market value of the goods at the time the lease is
 13 entered into;

14 (b) the lessee assumes risk of loss of the goods, or agrees to
 15 pay taxes, insurance, filing, recording, or registration fees,
 16 or service or maintenance costs with respect to the goods;

17 (c) the lessee has an option to renew the lease or to become
 18 the owner of the goods;

19 (d) the lessee has an option to renew the lease for a fixed
 20 rent that is equal to or greater than the reasonably
 21 predictable fair market rent for the use of the goods for the
 22 term of the renewal at the time the option is to be
 23 performed; or

24 (e) the lessee has an option to become the owner of the
 25 goods for a fixed price that is equal to or greater than the
 26 reasonably predictable fair market value of the goods at the
 27 time the option is to be performed.

28 For purposes of this subsection:

29 (x) Additional consideration is not nominal if:

30 (i) when the option to renew the lease is granted to the
 31 lessee the rent is stated to be the fair market rent for
 32 the use of the goods for the term of the renewal
 33 determined at the time the option is to be performed; or

34 (ii) when the option to become the owner of the goods
 35 is granted to the lessee the price is stated to be the fair
 36 market value of the goods determined at the time the
 37 option is to be performed.

38 Additional consideration is nominal if it is less than the
 39 lessee's reasonably predictable cost of performing under the
 40 lease agreement if the option is not exercised.

41 (y) "Reasonably predictable" and "remaining economic life
 42 of the goods" are to be determined with reference to the
 43 facts and circumstances at the time the transaction is
 44 entered into.

45 (z) "Present value" means the amount as of a date certain of
 46 one (1) or more sums payable in the future, discounted to
 47 the date certain. The discount is determined by the interest
 48 rate specified by the parties if the rate is not manifestly
 49 unreasonable at the time the transaction is entered into.
 50 Otherwise, the discount is determined by a commercially

1 reasonable rate that takes into account the facts and
 2 circumstances of each case at the time the transaction was
 3 entered into.

4 (38) "Send" in connection with any writing or notice means to
 5 deposit in the mail or deliver for transmission by any other usual
 6 means of communication with postage or cost of transmission
 7 provided for and properly addressed and, in the case of an
 8 instrument, to an address specified thereon or otherwise agreed
 9 or, if there be none, to any address reasonable under the
 10 circumstances. The receipt of any writing or notice within the
 11 time at which it would have arrived if properly sent has the effect
 12 of a proper sending.

13 (39) "Signed" includes any symbol executed or adopted by a
 14 party with present intention to authenticate a writing.

15 (40) "Surety" includes guarantor.

16 (41) "Telegram" includes a message transmitted by radio,
 17 teletype, cable, any mechanical method of transmission, or the
 18 like.

19 (42) "Term" means that portion of an agreement which relates to
 20 a particular matter.

21 (43) "Unauthorized" signature means one made without actual,
 22 implied, or apparent authority and includes a forgery.

23 (44) "Value". Except as otherwise provided with respect to
 24 negotiable instruments and bank collections (IC 26-1-3.1-303,
 25 IC 26-1-4-208, and IC 26-1-4-209) a person gives value for
 26 rights if ~~he~~ **the person** acquires them:

27 (a) in return for a binding commitment to extend credit or
 28 for the extension of immediately available credit whether or
 29 not drawn upon and whether or not a chargeback is
 30 provided for in the event of difficulties in collection;

31 (b) as security for or in total or partial satisfaction of a
 32 preexisting claim;

33 (c) by accepting delivery pursuant to a preexisting contract
 34 for purchase; or

35 (d) generally, in return for any consideration sufficient to
 36 support a simple contract.

37 (45) "Warehouse receipt" means a ~~receipt~~ **document of title**
 38 issued by a person engaged in the business of storing goods for
 39 hire.

40 (46) "Written" or "writing" includes printing, typewriting, or any
 41 other intentional reduction to tangible form."

42 Delete pages 2 through 7.

43 Page 8, delete lines 1 through 30.

44 Page 10, between lines 20 and 21, begin a new paragraph and
 45 insert:

46 "SECTION 8. IC 26-1-2-103 IS AMENDED TO READ AS
 47 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (1) In IC 26-1-2,
 48 unless the context otherwise requires:

49 (a) "Buyer" means a person who buys or contracts to buy goods.

50 (b) "Good faith" in the case of a merchant means honesty in fact

and observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to IC 26-1-2, or to specified parts thereof, and the sections in which they appear are:

"Acceptance". IC 26-1-2-606.

"Banker's credit". IC 26-1-2-325.

"Between merchants". IC 26-1-2-104.

"Cancellation". IC 26-1-2-106(4).

"Commercial unit". IC 26-1-2-105.

"Confirmed credit". IC 26-1-2-325.

"Conforming to contract". IC 26-1-2-106.

"Contract for sale". IC 26-1-2-106.

"Cover". IC 26-1-2-712.

"Entrusting". IC 26-1-2-403.

"Financing agency". IC 26-1-2-104.

"Future goods". IC 26-1-2-105.

"Goods". IC 26-1-2-105.

"Identification". IC 26-1-2-501.

"Installment contract". IC 26-1-2-612.

"Letter of credit". IC 26-1-2-325.

"Lot". IC 26-1-2-105.

"Merchant". IC 26-1-2-104.

"Overseas". IC 26-1-2-323.

"Person in the position of seller". IC 26-1-2-707.

"Present sale". IC 26-1-2-106.

"Sale". IC 26-1-2-106.

"Sale on approval". IC 26-1-2-326.

"Sale or return". IC 26-1-2-326.

"Termination". IC 26-1-2-106.

(3) **"Control" as provided in IC 26-1-7-106** and the following definitions apply to IC 26-1-2:

"Check". IC 26-1-3.1-104.

"Consignee". IC 26-1-7-102.

"Consignor". IC 26-1-7-102.

"Consumer goods". IC 26-1-9.1-102.

"Dishonor". IC 26-1-3.1-502.

"Draft". IC 26-1-3.1-104.

(4) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-2.

SECTION 9. IC 26-1-2-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany **or are associated with** the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (IC 26-1-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants."

Page 10, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 11. IC 26-1-2-310 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 310. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods, even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods, he may ship them under reservation and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due, unless such inspection is inconsistent with the terms of the contract (IC 26-1-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subdivision (b), then payment is due, **regardless of where the goods are to be received:**

(i) at the time and place at which the buyer is to receive **delivery of the tangible** documents; ~~regardless of where the goods are to be received or~~

(ii) **at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence;** and

(d) where the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment, but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

SECTION 12. IC 26-1-2-323 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 323. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller, unless otherwise agreed, must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a **tangible** bill of lading has been issued in a set of parts, unless otherwise agreed, if the documents are not to be sent from abroad, the buyer may demand tender of the full set. Otherwise, only one (1) part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of IC 26-1-2-508(1) on cure of improper delivery; and

(b) even though the full set is demanded, if the documents are sent from abroad, the person tendering an incomplete set may nevertheless require payments upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

SECTION 13. IC 26-1-2-401 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 401. Each provision of IC 26-1-2 with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods, except where the provision refers to such title. Insofar as situations are not covered by the other provisions of IC 26-1-2 and matters concerning title become material, the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (IC 26-1-2-501), and unless otherwise explicitly agreed, the buyer acquires by their identification a special property as limited by IC 26-1. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of IC 26-1-9.1 on secured transactions, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place, and in particular despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed, where delivery is to be made without moving the goods:

(a) if the seller is to deliver a **tangible** document of title, title passes at the time when and the place where he delivers such documents **and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document;** or

(b) if the goods are at the time of contracting already identified and no documents **of title** are to be delivered, title

1 passes at the time and place of contracting.

2 (4) A rejection or other refusal by the buyer to receive or retain
3 the goods, whether or not justified, or a justified revocation of
4 acceptance revests title to the goods in the seller. Such reversioning
5 occurs by operation of law and is not a "sale".

6 SECTION 14. IC 26-1-2-503 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 503. (1) Tender of
8 delivery requires that the seller put and hold conforming goods at the
9 buyer's disposition and give the buyer any notification reasonably
10 necessary to enable him to take delivery. The manner, time and place
11 for tender are determined by the agreement and IC 26-1-2, and in
12 particular:

13 (a) tender must be at a reasonable hour, and if it is of goods they
14 must be kept available for the period reasonably necessary to
15 enable the buyer to take possession; but

16 (b) unless otherwise agreed, the buyer must furnish facilities
17 reasonably suited to the receipt of the goods.

18 (2) Where the case is within IC 26-1-2-504 respecting shipment,
19 tender requires that the seller comply with its provisions.

20 (3) Where the seller is required to deliver at a particular
21 destination, tender requires that he comply with subsection (1) and also
22 in any appropriate case tender documents as described in subsections
23 (4) and (5).

24 (4) Where goods are in the possession of a bailee and are to be
25 delivered without being moved:

26 (a) tender requires that the seller either tender a negotiable
27 document of title covering such goods or procure
28 acknowledgement by the bailee of the buyer's right to possession
29 of the goods; but

30 (b) tender to the buyer of a nonnegotiable document of title or of
31 a ~~written direction to record directing~~ the bailee to deliver is
32 sufficient tender unless the buyer seasonably objects, and **except**
33 **as otherwise provided in IC 26-1-9.1**, receipt by the bailee of
34 notification of the buyer's rights fixes those rights as against the
35 bailee and all third persons; but risk of loss of the goods and of
36 any failure by the bailee to honor the nonnegotiable document of
37 title or to obey the direction remains on the seller until the buyer
38 has had a reasonable time to present the document or direction,
39 and a refusal by the bailee to honor the document or to obey the
40 direction defeats the tender.

41 (5) Where the contract requires the seller to deliver documents:

42 (a) he must tender all such documents in correct form, except as
43 provided in IC 26-1-2-323(2) with respect to bills of lading in a
44 set; and

45 (b) tender through customary banking channels is sufficient and
46 dishonor of a draft accompanying the documents constitutes
47 nonacceptance or rejection.

48 SECTION 15. IC 26-1-2-505 IS AMENDED TO READ AS
49 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 505. (1) Where the
50 seller has identified goods to the contract by or before shipment:

(a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security, but except in a case of conditional delivery (IC 26-1-2-507(2)), a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession **or control** of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within IC 26-1-2-504, but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document **of title**.

SECTION 16. IC 26-1-2-506 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 506. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular. ~~on its face.~~

SECTION 17. IC 26-1-2-509 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 509. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (IC 26-1-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of **possession or control of** a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of **possession or control of** a nonnegotiable document of title or other ~~written~~ direction to deliver **in a**

1 **record**, as provided in IC 26-1-2-503(4)(b).

2 (3) In any case not within subsection (1) or (2), the risk of loss
3 passes to the buyer on his receipt of the goods if the seller is a
4 merchant. Otherwise the risk passes to the buyer on tender of delivery.

5 (4) The provisions of this section are subject to contrary agreement
6 of the parties and to the provisions of IC 26-1-2-327 on sale on
7 approval and IC 26-1-2-510 on effect of breach on risk of loss.

8 SECTION 18. IC 26-1-2-605 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 605. (1) The buyer's
10 failure to state in connection with rejection a particular defect which is
11 ascertainable by reasonable inspection precludes him from relying on
12 the unstated defect to justify rejection or to establish breach:

- 13 (a) where the seller could have cured it if stated seasonably; or
- 14 (b) between merchants when the seller has after rejection made
- 15 a request in writing for a full and final written statement of all
- 16 defects on which the buyer proposes to rely.

17 (2) Payment against documents made without reservation of rights
18 precludes recovery of the payment for defects apparent ~~on the face of~~
19 **in** the documents.

20 SECTION 19. IC 26-1-2-705 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 705. (1) The seller may
22 stop delivery of goods in the possession of a carrier or other bailee
23 when he discovers the buyer to be insolvent (IC 26-1-2-702) and may
24 stop delivery of carload, truckload, planeload, or larger shipments of
25 express or freight when the buyer repudiates or fails to make a payment
26 due before delivery or if for any other reason the seller has a right to
27 withhold or reclaim the goods.

- 28 (2) As against such buyer the seller may stop delivery until:
- 29 (a) receipt of the goods by the buyer; or
- 30 (b) acknowledgment to the buyer by any bailee of the goods
- 31 except a carrier that the bailee holds the goods for the buyer; or
- 32 (c) such acknowledgment to the buyer by a carrier by reshipment
- 33 or as ~~warehouseman~~ **a warehouse**; or
- 34 (d) negotiation to the buyer of any negotiable document of title
- 35 covering the goods.

36 (3) (a) To stop delivery, the seller must so notify as to enable the
37 bailee by reasonable diligence to prevent delivery of the goods.

38 (b) After such notification, the bailee must hold and deliver the
39 goods according to the directions of the seller, but the seller is liable to
40 the bailee for any ensuing charges or damages.

41 (c) If a negotiable document of title has been issued for goods, the
42 bailee is not obliged to obey a notification to stop until **surrender of**
43 **possession or control** of the document.

44 (d) A carrier who has issued a nonnegotiable bill of lading is not
45 obliged to obey a notification to stop received from a person other than
46 the consignor.

47 SECTION 20. IC 26-1-2.1-103 IS AMENDED TO READ AS
48 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (1) Unless the
49 context otherwise requires, in IC 26-1-2.1:

- 50 (a) "Buyer in ordinary course of business" means a person who

in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ **acquiring** goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars (\$25,000).

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one (1) of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the

- 1 goods in connection with or as part of the contract by
 2 which the lessor acquired the goods or the right to
 3 possession and use of the goods; or
 4 (D) if the lease is not a consumer lease, the lessor,
 5 before the lessee signs the lease contract, informs the
 6 lessee in writing: (a) of the identity of the person
 7 supplying the goods to the lessor, unless the lessee has
 8 selected that person and directed the lessor to acquire
 9 the goods or the right to possession and use of the
 10 goods from that person; (b) that the lessee is entitled
 11 under IC 26-1-2.1 to the promises and warranties,
 12 including those of any third party, provided to the
 13 lessor by the person supplying the goods in connection
 14 with or as part of the contract by which the lessor
 15 acquired the goods or the right to possession and use of
 16 the goods; and (c) that the lessee may communicate
 17 with the person supplying the goods to the lessor and
 18 receive an accurate and complete statement of those
 19 promises and warranties, including any disclaimers and
 20 limitations of them or of remedies.
- 21 (h) "Goods" means all things that are movable at the time of
 22 identification to the lease contract, or are fixtures
 23 (IC 26-1-2.1-309), but the term does not include money,
 24 documents, instruments, accounts, chattel paper, general
 25 intangibles, or minerals or the like, including oil and gas, before
 26 extraction. The term also includes the unborn young of animals.
- 27 (i) "Installment lease contract" means a lease contract that
 28 authorizes or requires the delivery of goods in separate lots to be
 29 separately accepted, even though the lease contract contains a
 30 clause "each delivery is a separate lease" or its equivalent.
- 31 (j) "Lease" means a transfer of the right to possession and use of
 32 goods for a term in return for consideration, but a sale, including
 33 a sale on approval or a sale or return, or retention or creation of
 34 a security interest is not a lease. Unless the context clearly
 35 indicates otherwise, the term includes a sublease.
- 36 (k) "Lease agreement" means the bargain, with respect to the
 37 lease, of the lessor and the lessee in fact as found in their
 38 language or by implication from other circumstances including
 39 course of dealing or usage of trade or course of performance as
 40 provided in IC 26-1-2.1. Unless the context clearly indicates
 41 otherwise, the term includes a sublease agreement.
- 42 (l) "Lease contract" means the total legal obligation that results
 43 from the lease agreement as affected by IC 26-1-2.1 and any
 44 other applicable rules of law. Unless the context clearly indicates
 45 otherwise, the term includes a sublease contract.
- 46 (m) "Leasehold interest" means the interest of the lessor or the
 47 lessee under a lease contract.
- 48 (n) "Lessee" means a person who acquires the right to possession
 49 and use of goods under a lease. Unless the context clearly
 50 indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ **acquiring** goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to IC 26-1-2.1 and the sections in which they appear are:

"Accessions". IC 26-1-2.1-310(1).

"Construction mortgage". IC 26-1-2.1-309(1)(d).

- 1 "Encumbrance". IC 26-1-2.1-309(1)(e).
 2 "Fixtures". IC 26-1-2.1-309(1)(a).
 3 "Fixture filing". IC 26-1-2.1-309(1)(b).
 4 "Purchase money lease". IC 26-1-2.1-309(1)(c).
 5 (3) The following definitions in other chapters apply to
 6 IC 26-1-2.1:
 7 "Account". IC 26-1-9.1-102(a)(2).
 8 "Between merchants". IC 26-1-2-104(3).
 9 "Buyer". IC 26-1-2-103(1)(a).
 10 "Chattel paper". IC 26-1-9.1-102(a)(11).
 11 "Consumer goods". IC 26-1-9.1-102(a)(23).
 12 "Document". IC 26-1-9.1-102(a)(30).
 13 "Entrusting". IC 26-1-2-403(3).
 14 "General intangibles". IC 26-1-9.1-102(a)(42).
 15 "Good faith". IC 26-1-2-103(1)(b).
 16 "Instrument". IC 26-1-9.1-102(a)(47).
 17 "Merchant". IC 26-1-2-104(1).
 18 "Mortgage". IC 26-1-9.1-102(a)(55).
 19 "Pursuant to commitment". IC 26-1-9.1-102(a)(68).
 20 "Receipt". IC 26-1-2-103(1)(c).
 21 "Sale". IC 26-1-2-106(1).
 22 "Sale on approval". IC 26-1-2-326.
 23 "Sale or return". IC 26-1-2-326.
 24 "Seller". IC 26-1-2-103(1)(d).
 25 (4) In addition, IC 26-1-1 contains general definitions and
 26 principles of construction and interpretation applicable throughout
 27 IC 26-1-2.1.
 28 SECTION 21. IC 26-1-2.1-514 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 514. (1) In rejecting
 30 goods, a lessee's failure to state a particular defect that is ascertainable
 31 by reasonable inspection precludes the lessee from relying on the
 32 defect to justify rejection or to establish default:
 33 (a) if, stated seasonably, the lessor or the supplier could have
 34 cured it (IC 26-1-2.1-513); or
 35 (b) between merchants if the lessor or the supplier after rejection
 36 has made a request in writing for a full and final written
 37 statement of all defects on which the lessee proposes to rely.
 38 (2) A lessee's failure to reserve rights when paying rent or other
 39 consideration against documents precludes recovery of the payment for
 40 defects apparent ~~on the face of~~ in the documents.
 41 SECTION 22. IC 26-1-2.1-526 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 526. (1) A lessor may
 43 stop delivery of goods in the possession of a carrier or other bailee if
 44 the lessor discovers the lessee to be insolvent and may stop delivery of
 45 carload, truckload, planeload, or larger shipments of express or freight
 46 if the lessee repudiates or fails to make a payment due before delivery,
 47 whether for rent, security, or otherwise under the lease contract, or for
 48 any other reason the lessor has a right to withhold or take possession of
 49 the goods.
 50 (2) In pursuing its remedies under subsection (1), the lessor may

1 stop delivery until:

- 2 (a) receipt of the goods by the lessee;
 3 (b) acknowledgment to the lessee by any bailee of the goods,
 4 except a carrier, that the bailee holds the goods for the lessee; or
 5 (c) such an acknowledgment to the lessee by a carrier via
 6 reshipment or as ~~warehouseman~~ **a warehouse.**

7 (3)(a) To stop delivery, a lessor shall so notify as to enable the
 8 bailee by reasonable diligence to prevent delivery of the goods.

9 (b) After notification, the bailee shall hold and deliver the goods
 10 according to the directions of the lessor, but the lessor is liable
 11 to the bailee for any ensuing charges or damages.

12 (c) A carrier who has issued a nonnegotiable bill of lading is not
 13 obliged to obey a notification to stop received from a person
 14 other than the consignor.

15 SECTION 23. IC 26-1-4-104 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (a) In IC 26-1-4,
 17 unless the context otherwise requires:

18 (1) "Account" means any deposit or credit account with a bank,
 19 including a demand, time, savings, passbook, share draft, or like
 20 account, other than an account evidenced by a certificate of
 21 deposit.

22 (2) "Afternoon" means the period of a day between noon and
 23 midnight.

24 (3) "Banking day" means the part of a day on which a bank is
 25 open to the public for carrying on substantially all of its banking
 26 functions, but does not include Saturday, Sunday, or a legal
 27 holiday.

28 (4) "Clearing house" means an association of banks or other
 29 payors regularly clearing items.

30 (5) "Customer" means a person having an account with a bank
 31 or for whom a bank has agreed to collect items, including a bank
 32 that maintains an account at another bank.

33 (6) "Documentary draft" means a draft to be presented for
 34 acceptance or payment if specified documents, certificated
 35 securities (IC 26-1-8.1-102), or instructions for uncertificated
 36 securities (IC 26-1-8.1-102) or other certificates, statements, or
 37 the like are to be received by the drawee or other payor before
 38 acceptance or payment of the draft.

39 (7) "Draft" means a draft (as defined in IC 26-1-3.1-104) or an
 40 item, other than an instrument, that is an order.

41 (8) "Drawee" means a person ordered in a draft to make
 42 payment.

43 (9) "Item" means an instrument or a promise or order to pay
 44 money handled by a bank for collection or payment. The term
 45 does not include a payment order governed by IC 26-1-4.1 or a
 46 credit or debit card slip.

47 (10) "Midnight deadline" with respect to a bank is midnight on
 48 its next banking day following the banking day on which it
 49 receives the relevant item or notice or from which the time for
 50 taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit, or by remittance, or otherwise as instructed.

A settlement may be either provisional or final.

(12) "Suspend payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to IC 26-1-4 and the sections in which they appear are:

"Agreement for electronic presentment". IC 26-1-4-110.

"Bank". IC 26-1-4-105.

"Collecting bank". IC 26-1-4-105.

"Depository bank". IC 26-1-4-105.

"Intermediary bank". IC 26-1-4-105.

"Payor bank". IC 26-1-4-105.

"Presenting bank". IC 26-1-4-105.

"Presentment notice". IC 26-1-4-110.

(c) **"Control" as provided in IC 26-1-7-106 and** the following definitions in IC 26-1-3.1 apply to IC 26-1-4:

"Acceptance". IC 26-1-3.1-409.

"Alteration". IC 26-1-3.1-407.

"Cashier's check". IC 26-1-3.1-104.

"Certificate of deposit". IC 26-1-3.1-104.

"Certified check". IC 26-1-3.1-409.

"Check". IC 26-1-3.1-104.

"Holder in due course". IC 26-1-3.1-302.

"Instrument". IC 26-1-3.1-104.

"Notice of dishonor". IC 26-1-3.1-503.

"Order". IC 26-1-3.1-103.

"Ordinary care". IC 26-1-3.1-103.

"Person entitled to enforce". IC 26-1-3.1-301.

"Presentment". IC 26-1-3.1-501.

"Promise". IC 26-1-3.1-103.

"Prove". IC 26-1-3.1-103.

"Teller's check". IC 26-1-3.1-104.

"Unauthorized signature". IC 26-1-3.1-403.

(d) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-4.

SECTION 24. IC 26-1-4-210 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 210. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in the case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in the case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

1 (3) if it makes an advance on or against the item.

2 (b) If credit given for several items received at one (1) time or
3 under a single agreement is withdrawn or applied in part, the security
4 interest remains upon all the items, any accompanying documents, or
5 the proceeds of either. For the purpose of this section, credits first
6 given are first withdrawn.

7 (c) Receipt by a collecting bank of a final settlement for an item
8 is a realization on its security interest in the item, accompanying
9 documents, and proceeds. So long as the bank does not receive final
10 settlement for the item or give up possession of the item or **possession**
11 **or control of the** accompanying documents for purposes other than
12 collection, the security interest continues to that extent and is subject
13 to IC 26-1-9.1, but:

14 (1) no security agreement is necessary to make the security
15 interest enforceable (IC 26-1-9.1-203(b)(3)(A));

16 (2) no filing is required to perfect the security interest; and

17 (3) the security interest has priority over conflicting perfected
18 security interests in the item, accompanying documents, or
19 proceeds."

20 Page 29, line 23, strike "and".

21 Page 29, line 23, after "though" insert "**or**".

22 Page 30, line 2, after "endorsement" delete ".".

23 Page 30, line 2, after "as well as" insert "**and**".

24 Page 30, line 2, reset in roman "delivery".

25 Page 34, after line 42, begin a new paragraph and insert:

26 "SECTION 65. IC 26-1-8.1-103 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (a) A share or
28 similar equity interest issued by a corporation, business trust, joint
29 stock company, or similar entity is a security.

30 (b) An "investment company security" is a security. "Investment
31 company security" means a share or similar equity interest issued by an
32 entity that is registered as an investment company under the federal
33 investment company laws, an interest in a unit investment trust that is
34 so registered, or a face amount certificate issued by a face amount
35 certificate company that is so registered. Investment company security
36 does not include an insurance policy or endowment policy or annuity
37 contract issued by an insurance company.

38 (c) An interest in a partnership or limited liability company is not
39 a security unless it is dealt in or traded on securities exchanges or in
40 securities markets, its terms expressly provide that it is a security
41 governed by IC 26-1-8.1, or it is an investment company security.
42 However, an interest in a partnership or limited liability company is a
43 financial asset if it is held in a securities account.

44 (d) A writing that is a security certificate is governed by
45 IC 26-1-8.1 and not by IC 26-1-3.1, even though it also meets the
46 requirements of that article. However, a negotiable instrument
47 governed by IC 26-1-3.1 is a financial asset if it is held in a securities
48 account.

49 (e) An option or a similar obligation issued by a clearing
50 corporation to its participants is not a security, but it is a financial asset.

1 (f) A commodity contract (as defined in IC 26-1-9.1-102(a)(15))
 2 is not a security or a financial asset.

3 **(g) A document of title is not a financial asset unless section**
 4 **102(a)(9)(iii) of this chapter applies.**

5 SECTION 66. IC 26-1-9.1-102 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 102. (a) In IC 26-1-9.1:

7 (1) "Accession" means goods that are physically united with
 8 other goods in such a manner that the identity of the original
 9 goods is not lost.

10 (2) "Account", except as used in "account for", means a right to
 11 payment of a monetary obligation, whether or not earned by
 12 performance (i) for property that has been or is to be sold,
 13 leased, licensed, assigned, or otherwise disposed of, (ii) for
 14 services rendered or to be rendered, (iii) for a policy of insurance
 15 issued or to be issued, (iv) for a secondary obligation incurred or
 16 to be incurred, (v) for energy provided or to be provided, (vi) for
 17 the use or hire of a vessel under a charter or other contract, (vii)
 18 arising out of the use of a credit or charge card or information
 19 contained on or for use with the card, or (viii) as winnings in a
 20 lottery or other game of chance operated or sponsored by a state,
 21 governmental unit of a state, or person licensed or authorized to
 22 operate the game by a state or governmental unit of a state. The
 23 term includes health-care-insurance receivables. The term does
 24 not include (i) rights to payment evidenced by chattel paper or
 25 an instrument, (ii) commercial tort claims, (iii) deposit accounts,
 26 (iv) investment property, (v) letter-of-credit rights or letters of
 27 credit, or (vi) rights to payment for money or funds advanced or
 28 sold, other than rights arising out of the use of a credit or charge
 29 card or information contained on or for use with the card.

30 (3) "Account debtor" means a person obligated on an account,
 31 chattel paper, or general intangible. The term does not include
 32 persons obligated to pay a negotiable instrument, even if the
 33 instrument constitutes part of chattel paper.

34 (4) "Accounting", except as used in "accounting for", means a
 35 record:

36 (A) authenticated by a secured party;

37 (B) indicating the aggregate unpaid secured obligations as
 38 of a date not more than thirty-five (35) days earlier or
 39 thirty-five (35) days later than the date of the record; and

40 (C) identifying the components of the obligations in
 41 reasonable detail.

42 (5) "Agricultural lien" means an interest, other than a security
 43 interest, in farm products:

44 (A) that secures payment or performance of an obligation
 45 for:

46 (i) goods or services furnished in connection with a
 47 debtor's farming operation; or

48 (ii) rent on real property leased by a debtor in
 49 connection with the debtor's farming operation;

50 (B) that is created by statute in favor of a person that:

- 1 (i) in the ordinary course of its business furnished
- 2 goods or services to a debtor in connection with the
- 3 debtor's farming operation; or
- 4 (ii) leased real property to a debtor in connection with
- 5 the debtor's farming operation; and
- 6 (C) whose effectiveness does not depend on the person's
- 7 possession of the personal property.
- 8 (6) "As-extracted collateral" means:
- 9 (A) oil, gas, or other minerals that are subject to a security
- 10 interest that:
- 11 (i) is created by a debtor having an interest in the
- 12 minerals before extraction; and
- 13 (ii) attaches to the minerals as extracted; or
- 14 (B) accounts arising out of the sale at the wellhead or
- 15 minehead of oil, gas, or other minerals in which the debtor
- 16 had an interest before extraction.
- 17 (7) "Authenticate" means:
- 18 (A) to sign; or
- 19 (B) to execute or otherwise adopt a symbol, or encrypt or
- 20 similarly process a record in whole or in part, with the
- 21 present intent of the authenticating person to identify the
- 22 person and adopt or accept a record.
- 23 (8) "Bank" means an organization that is engaged in the business
- 24 of banking. The term includes savings banks, savings and loan
- 25 associations, credit unions, and trust companies.
- 26 (9) "Cash proceeds" means proceeds that are money, checks,
- 27 deposit accounts, or the like.
- 28 (10) "Certificate of title" means a certificate of title with respect
- 29 to which a statute provides for the security interest in question to
- 30 be indicated on the certificate as a condition or result of the
- 31 security interest's obtaining priority over the rights of a lien
- 32 creditor with respect to the collateral.
- 33 (11) "Chattel paper" means a record or records that evidence
- 34 both a monetary obligation and a security interest in specific
- 35 goods, a security interest in specific goods and software used in
- 36 the goods, a security interest in specific goods and license of
- 37 software used in the goods, a lease of specific goods, or a lease
- 38 of specific goods and license of software used in the goods. In
- 39 this subdivision, "monetary obligation" means a monetary
- 40 obligation secured by the goods or owed under a lease of the
- 41 goods and includes a monetary obligation with respect to
- 42 software used in the goods. The term "chattel paper" does not
- 43 include: (i) charters or other contracts involving the use or hire
- 44 of a vessel; or (ii) records that evidence a right to payment
- 45 arising out of the use of a credit or charge card or information
- 46 contained on or for use with the card. If a transaction is
- 47 evidenced by records that include an instrument or series of
- 48 instruments, the group of records taken together constitutes
- 49 chattel paper.
- 50 (12) "Collateral" means the property subject to a security interest

- 1 or agricultural lien. The term includes:
- 2 (A) proceeds to which a security interest attaches;
- 3 (B) accounts, chattel paper, payment intangibles, and
- 4 promissory notes that have been sold; and
- 5 (C) goods that are the subject of a consignment.
- 6 (13) "Commercial tort claim" means a claim arising in tort with
- 7 respect to which:
- 8 (A) the claimant is an organization; or
- 9 (B) the claimant is an individual and the claim:
- 10 (i) arose in the course of the claimant's business or
- 11 profession; and
- 12 (ii) does not include damages arising out of personal
- 13 injury to or the death of an individual.
- 14 (14) "Commodity account" means an account maintained by a
- 15 commodity intermediary in which a commodity contract is
- 16 carried for a commodity customer.
- 17 (15) "Commodity contract" means a commodity futures contract,
- 18 an option on a commodity futures contract, a commodity option,
- 19 or another contract if the contract or option is:
- 20 (A) traded on or subject to the rules of a board of trade that
- 21 has been designated as a contract market for such a contract
- 22 pursuant to federal commodities laws; or
- 23 (B) traded on a foreign commodity board of trade,
- 24 exchange, or market, and is carried on the books of a
- 25 commodity intermediary for a commodity customer.
- 26 (16) "Commodity customer" means a person for which a
- 27 commodity intermediary carries a commodity contract on its
- 28 books.
- 29 (17) "Commodity intermediary" means a person that:
- 30 (A) is registered as a futures commission merchant under
- 31 federal commodities law; or
- 32 (B) in the ordinary course of its business provides clearance
- 33 or settlement services for a board of trade that has been
- 34 designated as a contract market pursuant to federal
- 35 commodities law.
- 36 (18) "Communicate" means:
- 37 (A) to send a written or other tangible record;
- 38 (B) to transmit a record by any means agreed upon by the
- 39 persons sending and receiving the record; or
- 40 (C) in the case of transmission of a record to or by a filing
- 41 office, to transmit a record by any means prescribed by
- 42 filing-office rule.
- 43 (19) "Consignee" means a merchant to which goods are
- 44 delivered in a consignment.
- 45 (20) "Consignment" means a transaction, regardless of its form,
- 46 in which a person delivers goods to a merchant for the purpose
- 47 of sale and:
- 48 (A) the merchant:
- 49 (i) deals in goods of that kind under a name other than
- 50 the name of the person making delivery;

- 1 (ii) is not an auctioneer; and
- 2 (iii) is not generally known by its creditors to be
- 3 substantially engaged in selling the goods of others;
- 4 (B) with respect to each delivery, the aggregate value of the
- 5 goods is one thousand dollars (\$1,000) or more at the time
- 6 of delivery;
- 7 (C) the goods are not consumer goods immediately before
- 8 delivery; and
- 9 (D) the transaction does not create a security interest that
- 10 secures an obligation.
- 11 (21) "Consignor" means a person that delivers goods to a
- 12 consignee in a consignment.
- 13 (22) "Consumer debtor" means a debtor in a consumer
- 14 transaction.
- 15 (23) "Consumer goods" means goods that are used or bought for
- 16 use primarily for personal, family, or household purposes.
- 17 (24) "Consumer-goods transaction" means a consumer
- 18 transaction in which:
- 19 (A) an individual incurs an obligation primarily for
- 20 personal, family, or household purposes; and
- 21 (B) a security interest in consumer goods secures the
- 22 obligation.
- 23 (25) "Consumer obligor" means an obligor who is an individual
- 24 and who incurred the obligation as part of a transaction entered
- 25 into primarily for personal, family, or household purposes.
- 26 (26) "Consumer transaction" means a transaction in which (i) an
- 27 individual incurs an obligation primarily for personal, family, or
- 28 household purposes, (ii) a security interest secures the
- 29 obligation, and (iii) the collateral is held or acquired primarily
- 30 for personal, family, or household purposes. The term includes
- 31 consumer-goods transactions.
- 32 (27) "Continuation statement" means an amendment of a
- 33 financing statement that:
- 34 (A) identifies, by its file number, the initial financing
- 35 statement to which it relates; and
- 36 (B) indicates that it is a continuation statement for, or that
- 37 it is filed to continue the effectiveness of, the identified
- 38 financing statement.
- 39 (28) "Debtor" means:
- 40 (A) a person having an interest, other than a security
- 41 interest or other lien, in the collateral, whether or not the
- 42 person is an obligor;
- 43 (B) a seller of accounts, chattel paper, payment intangibles,
- 44 or promissory notes; or
- 45 (C) a consignee.
- 46 (29) "Deposit account" means a demand, time, savings,
- 47 passbook, or similar account maintained with a bank. The term
- 48 does not include investment property or accounts evidenced by
- 49 an instrument.
- 50 (30) "Document" means a document of title or a receipt of the

type described in ~~IC 26-1-7-201(2)~~ **IC 26-1-7-201(b)**.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to IC 26-1-9.1-519(a).

(37) "Filing office" means an office designated in IC 26-1-9.1-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to IC 26-1-9.1-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying IC 26-1-9.1-502(a) and IC 26-1-9.1-502(b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing

timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, that:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or

performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under IC 26-1-9.1-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation

secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in IC 26-1-9.1-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under IC 26-1-9.1-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in clause (A);

(D) the spouse of an individual described in clause (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in clause (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in IC 26-1-9.1-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to IC 26-1-9.1-620, IC 26-1-9.1-621, and IC 26-1-9.1-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor, or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under IC 26-1-2-401, IC 26-1-2-505, IC 26-1-2-711(3),

- 1 IC 26-1-2.1-508(5), IC 26-1-4-210, or IC 26-1-5.1-118.
- 2 (73) "Security agreement" means an agreement that creates or
3 provides for a security interest.
- 4 (74) "Send", in connection with a record or notification, means:
5 (A) to deposit in the mail, deliver for transmission, or
6 transmit by any other usual means of communication, with
7 postage or cost of transmission provided for, addressed to
8 any address reasonable under the circumstances; or
9 (B) to cause the record or notification to be received within
10 the time that it would have been received if properly sent
11 under clause (A).
- 12 (75) "Software" means a computer program and any supporting
13 information provided in connection with a transaction relating to
14 the program. The term does not include a computer program that
15 is included in the definition of goods.
- 16 (76) "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.
- 20 (77) "Supporting obligation" means a letter-of-credit right or
21 secondary obligation that supports the payment or performance
22 of an account, chattel paper, a document, a general intangible, an
23 instrument, or investment property.
- 24 (78) "Tangible chattel paper" means chattel paper evidenced by
25 a record or records consisting of information that is inscribed on
26 a tangible medium.
- 27 (79) "Termination statement" means an amendment of a
28 financing statement that:
29 (A) identifies, by its file number, the initial financing
30 statement to which it relates; and
31 (B) indicates either that it is a termination statement or that
32 the identified financing statement is no longer effective.
- 33 (80) "Transmitting utility" means a person primarily engaged in
34 the business of:
35 (A) operating a railroad, subway, street railway, or trolley
36 bus;
37 (B) transmitting communications electrically,
38 electromagnetically, or by light;
39 (C) transmitting goods by pipeline or sewer; or
40 (D) transmitting or producing and transmitting electricity,
41 steam, gas, or water.
- 42 (b) **"Control" as provided in IC 26-1-7-106 and the following**
43 **definitions outside IC 26-1-9.1 apply to IC 26-1-9.1:**
44 "Applicant" IC 26-1-5.1-102.
45 "Beneficiary" IC 26-1-5.1-102.
46 "Broker" IC 26-1-8.1-102.
47 "Certificated security" IC 26-1-8.1-102.
48 "Check" IC 26-1-3.1-104.
49 "Clearing corporation" IC 26-1-8.1-102.
50 "Contract for sale" IC 26-1-2-106.

- 1 "Customer" IC 26-1-4-104.
- 2 "Entitlement holder" IC 26-1-8.1-102.
- 3 "Financial asset" IC 26-1-8.1-102.
- 4 "Holder in due course" IC 26-1-3.1-302.
- 5 "Issuer" (with respect to a letter of credit or letter-of-credit right)
- 6 IC 26-1-5.1-102.
- 7 "Issuer" (with respect to a security) IC 26-1-8.1-201.
- 8 **"Issuer" (with respect to documents of title) IC 26-1-7-102.**
- 9 "Lease" IC 26-1-2.1-103.
- 10 "Lease agreement" IC 26-1-2.1-103.
- 11 "Lease contract" IC 26-1-2.1-103.
- 12 "Leasehold interest" IC 26-1-2.1-103.
- 13 "Lessee" IC 26-1-2.1-103.
- 14 "Lessee in ordinary course of business" IC 26-1-2.1-103.
- 15 "Lessor" IC 26-1-2.1-103.
- 16 "Lessor's residual interest" IC 26-1-2.1-103.
- 17 "Letter of credit" IC 26-1-5.1-102.
- 18 "Merchant" IC 26-1-2-104.
- 19 "Negotiable instrument" IC 26-1-3.1-104.
- 20 "Nominated person" IC 26-1-5.1-102.
- 21 "Note" IC 26-1-3.1-104.
- 22 "Proceeds of a letter of credit" IC 26-1-5.1-114.
- 23 "Prove" IC 26-1-3.1-103.
- 24 "Sale" IC 26-1-2-106.
- 25 "Securities account" IC 26-1-8.1-501.
- 26 "Securities intermediary" IC 26-1-8.1-102.
- 27 "Security" IC 26-1-8.1-102.
- 28 "Security certificate" IC 26-1-8.1-102.
- 29 "Security entitlement" IC 26-1-8.1-102.
- 30 "Uncertificated security" IC 26-1-8.1-102.
- 31 (c) IC 26-1-1 contains general definitions and principles of
- 32 construction and interpretation applicable throughout IC 26-1-9.1.
- 33 SECTION 67. IC 26-1-9.1-203 IS AMENDED TO READ AS
- 34 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 203. (a) A security
- 35 interest attaches to collateral when it becomes enforceable against the
- 36 debtor with respect to the collateral, unless an agreement expressly
- 37 postpones the time of attachment.
- 38 (b) Except as otherwise provided in subsections (c) through (i), a
- 39 security interest is enforceable against the debtor and third parties with
- 40 respect to the collateral only if:
- 41 (1) value has been given;
- 42 (2) the debtor has rights in the collateral or the power to transfer
- 43 rights in the collateral to a secured party; and
- 44 (3) one (1) of the following conditions is met:
- 45 (A) The debtor has authenticated a security agreement that
- 46 provides a description of the collateral and, if the security
- 47 interest covers timber to be cut, a description of the land
- 48 concerned.
- 49 (B) The collateral is not a certificated security and is in the
- 50 possession of the secured party under IC 26-1-9.1-313

pursuant to the debtor's security agreement.

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under IC 26-1-8.1-301 pursuant to the debtor's security agreement.

(D) The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, **or electronic documents**, and the secured party has control under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to IC 26-1-4-210 on the security interest of a collecting bank, IC 26-1-5.1-118 on the security interest of a letter-of-credit issuer or nominated person, IC 26-1-9.1-110 on a security interest arising under IC 26-1-2 or IC 26-1-2.1, and IC 26-1-9.1-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than IC 26-1-9.1 or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by IC 26-1-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

SECTION 68. IC 26-1-9.1-207 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 207. (a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the

secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

SECTION 69. IC 26-1-9.1-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 208. (a) This section applies to cases in which there is no outstanding secured obligation, and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under IC 26-1-9.1-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under IC 26-1-9.1-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under IC 26-1-9.1-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under IC 26-1-8.1-106(d)(2) or IC 26-1-9.1-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) a secured party having control of a letter-of-credit right under IC 26-1-9.1-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; **and**

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its

1 **designated custodian to make copies of or revisions to**
 2 **the authoritative copy that add or change an identified**
 3 **assignee of the authoritative copy without the consent of**
 4 **the secured party.**

5 SECTION 70. IC 26-1-9.1-301 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 301. Except as
 7 otherwise provided in IC 26-1-9.1-303 through IC 26-1-9.1-306, the
 8 following rules determine the law governing perfection, the effect of
 9 perfection or nonperfection, and the priority of a security interest in
 10 collateral:

11 (1) Except as otherwise provided in this section, while a debtor
 12 is located in a jurisdiction, the local law of that jurisdiction
 13 governs perfection, the effect of perfection or nonperfection, and
 14 the priority of a security interest in collateral.

15 (2) While collateral is located in a jurisdiction, the local law of
 16 that jurisdiction governs perfection, the effect of perfection or
 17 nonperfection, and the priority of a possessory security interest
 18 in that collateral.

19 (3) Except as otherwise provided in subdivision (4), while
 20 **tangible** negotiable documents, goods, instruments, money, or
 21 tangible chattel paper is located in a jurisdiction, the local law of
 22 that jurisdiction governs:

23 (A) perfection of a security interest in the goods by filing a
 24 fixture filing;

25 (B) perfection of a security interest in timber to be cut; and

26 (C) the effect of perfection or nonperfection and the priority
 27 of a nonpossessory security interest in the collateral.

28 (4) The local law of the jurisdiction in which the wellhead or
 29 minehead is located governs perfection, the effect of perfection
 30 or nonperfection, and the priority of a security interest in
 31 as-extracted collateral.

32 SECTION 71. IC 26-1-9.1-310 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 310. (a) Except as
 34 otherwise provided in subsection (b) and IC 26-1-9.1-312(b), a
 35 financing statement must be filed to perfect all security interests and
 36 agricultural liens.

37 (b) The filing of a financing statement is not necessary to perfect
 38 a security interest:

39 (1) that is perfected under IC 26-1-9.1-308(d),
 40 IC 26-1-9.1-308(e), IC 26-1-9.1-308(f), or IC 26-1-9.1-308(g);

41 (2) that is perfected under IC 26-1-9.1-309 when it attaches;

42 (3) in property subject to a statute, regulation, or treaty described
 43 in IC 26-1-9.1-311(a);

44 (4) in goods in possession of a bailee that are perfected under
 45 IC 26-1-9.1-312(d)(1) or IC 26-1-9.1-312(d)(2);

46 (5) in certificated securities, documents, goods, or instruments
 47 which is perfected without filing, **control**, or possession under
 48 IC 26-1-9.1-312(e), IC 26-1-9.1-312(f), or IC 26-1-9.1-312(g);

49 (6) in collateral in the secured party's possession under
 50 IC 26-1-9.1-313;

- (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under IC 26-1-9.1-313;
- (8) in deposit accounts, electronic chattel paper, **electronic documents**, investment property, or letter-of-credit rights which is perfected by control under IC 26-1-9.1-314;
- (9) in proceeds which is perfected under IC 26-1-9.1-315; or
- (10) that is perfected under IC 26-1-9.1-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under IC 26-1-9.1 is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

SECTION 72. IC 26-1-9.1-312 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 312. (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in IC 26-1-9.1-315(c) and IC 26-1-9.1-315(d), for proceeds:

- (1) a security interest in a deposit account may be perfected only by control under IC 26-1-9.1-314;
- (2) and except as otherwise provided in IC 26-1-9.1-308(d), a security interest in a letter-of-credit right may be perfected only by control under IC 26-1-9.1-314; and
- (3) a security interest in money may be perfected only by the secured party's taking possession under IC 26-1-9.1-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

- (1) a security interest in the goods may be perfected by perfecting a security interest in the document; and
- (2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession **or control** for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or
- (2) loading, unloading, storing, shipping, transshipping,

1 manufacturing, processing, or otherwise dealing with them in a
2 manner preliminary to their sale or exchange.

3 (g) A perfected security interest in a certificated security or
4 instrument remains perfected for twenty (20) days without filing if the
5 secured party delivers the security certificate or instrument to the
6 debtor for the purpose of:

- 7 (1) ultimate sale or exchange; or
- 8 (2) presentation, collection, enforcement, renewal, or registration
9 of transfer.

10 (h) After the twenty (20) day period specified in subsection (e), (f),
11 or (g) expires, perfection depends upon compliance with IC 26-1-9.1.

12 SECTION 73. IC 26-1-9.1-313 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 313. (a) Except as
14 otherwise provided in subsection (b), a secured party may perfect a
15 security interest in **tangible** negotiable documents, goods, instruments,
16 money, or tangible chattel paper by taking possession of the collateral.
17 A secured party may perfect a security interest in certificated securities
18 by taking delivery of the certificated securities under IC 26-1-8.1-301.

19 (b) With respect to goods covered by a certificate of title issued by
20 this state, a secured party may perfect a security interest in the goods
21 by taking possession of the goods only in the circumstances described
22 in IC 26-1-9.1-316(e).

23 (c) With respect to collateral other than certificated securities and
24 goods covered by a document, a secured party takes possession of
25 collateral in the possession of a person other than the debtor, the
26 secured party, or a lessee of the collateral from the debtor in the
27 ordinary course of the debtor's business, when:

- 28 (1) the person in possession authenticates a record
29 acknowledging that it holds possession of the collateral for the
30 secured party's benefit; or
- 31 (2) the person takes possession of the collateral after having
32 authenticated a record acknowledging that it will hold possession
33 of collateral for the secured party's benefit.

34 (d) If perfection of a security interest depends upon possession of
35 the collateral by a secured party, perfection occurs not earlier than the
36 time the secured party takes possession and continues only while the
37 secured party retains possession.

38 (e) A security interest in a certificated security in registered form
39 is perfected by delivery when delivery of the certificated security
40 occurs under IC 26-1-8.1-301 and remains perfected by delivery until
41 the debtor obtains possession of the security certificate.

42 (f) A person in possession of collateral is not required to
43 acknowledge that it holds possession for a secured party's benefit.

44 (g) If a person acknowledges that it holds possession for the
45 secured party's benefit:

- 46 (1) the acknowledgment is effective under subsection (c) or
47 IC 26-1-8.1-301(a), even if the acknowledgment violates the
48 rights of a debtor; and
- 49 (2) unless the person otherwise agrees or a law other than
50 IC 26-1-9.1 otherwise provides, the person does not owe any

1 duty to the secured party and is not required to confirm the
2 acknowledgment to another person.

3 (h) A secured party having possession of collateral does not
4 relinquish possession by delivering the collateral to a person other than
5 the debtor or a lessee of the collateral from the debtor in the ordinary
6 course of the debtor's business if the person was instructed before the
7 delivery or is instructed contemporaneously with the delivery:

8 (1) to hold possession of the collateral for the secured party's
9 benefit; or

10 (2) to redeliver the collateral to the secured party.

11 (i) A secured party does not relinquish possession, even if a
12 delivery under subsection (h) violates the rights of a debtor. A person
13 to which collateral is delivered under subsection (h) does not owe any
14 duty to the secured party and is not required to confirm the delivery to
15 another person unless the person otherwise agrees or law other than
16 IC 26-1-9.1 otherwise provides.

17 SECTION 74. IC 26-1-9.1-314 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 314. (a) A security
19 interest in investment property, deposit accounts, letter-of-credit rights,
20 ~~or~~ electronic chattel paper, **or electronic documents** may be perfected
21 by control of the collateral under **IC 26-1-7-106**, IC 26-1-9.1-104,
22 IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107.

23 (b) A security interest in deposit accounts, electronic chattel paper,
24 ~~or~~ letter-of-credit rights, **or electronic documents** is perfected by
25 control under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, or
26 IC 26-1-9.1-107 when the secured party obtains control and remains
27 perfected by control only while the secured party retains control.

28 (c) A security interest in investment property is perfected by
29 control under IC 26-1-9.1-106 from the time the secured party obtains
30 control and remains perfected by control until:

31 (1) the secured party does not have control; and

32 (2) one of the following occurs:

33 (A) if the collateral is a certificated security, the debtor has
34 or acquires possession of the security certificate;

35 (B) if the collateral is an uncertificated security, the issuer
36 has registered or registers the debtor as the registered
37 owner; or

38 (C) if the collateral is a security entitlement, the debtor is or
39 becomes the entitlement holder.

40 SECTION 75. IC 26-1-9.1-317 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 317. (a) A security
42 interest or agricultural lien is subordinate to the rights of:

43 (1) a person entitled to priority under IC 26-1-9.1-322; and

44 (2) except as provided in subsection (e), a person that becomes
45 a lien creditor before the earlier of the time:

46 (A) the security interest or agricultural lien is perfected; or

47 (B) one (1) of the conditions specified in
48 IC 26-1-9.1-203(b)(3) is met;

49 and a financing statement covering the collateral is filed.

50 (b) Except as otherwise provided in subsection (e), a buyer, other

1 than a secured party, of tangible chattel paper, **tangible** documents,
 2 goods, instruments, or a security certificate takes free of a security
 3 interest or agricultural lien if the buyer gives value and receives
 4 delivery of the collateral without knowledge of the security interest or
 5 agricultural lien and before it is perfected.

6 (c) Except as otherwise provided in subsection (e), a lessee of
 7 goods takes free of a security interest or agricultural lien if the lessee
 8 gives value and receives delivery of the collateral without knowledge
 9 of the security interest or agricultural lien and before it is perfected.

10 (d) A licensee of a general intangible or a buyer, other than a
 11 secured party, of accounts, electronic chattel paper, **electronic**
 12 **documents**, general intangibles, or investment property other than a
 13 certificated security takes free of a security interest if the licensee or
 14 buyer gives value without knowledge of the security interest and before
 15 it is perfected.

16 (e) Except as otherwise provided in IC 26-1-9.1-320 and
 17 IC 26-1-9.1-321, if a person files a financing statement with respect to
 18 a purchase-money security interest before or within twenty (20) days
 19 after the debtor receives delivery of the collateral, the security interest
 20 takes priority over the rights of a buyer, lessee, or lien creditor that
 21 arise between the time the security interest attaches and the time of
 22 filing.

23 SECTION 76. IC 26-1-9.1-338 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 338. If a security
 25 interest or agricultural lien is perfected by a filed financing statement
 26 providing information described in IC 26-1-9.1-516(b)(5) that is
 27 incorrect at the time the financing statement is filed:

- 28 (1) the security interest or agricultural lien is subordinate to a
- 29 conflicting perfected security interest in the collateral to the
- 30 extent that the holder of the conflicting security interest gives
- 31 value in reasonable reliance upon the incorrect information; and
- 32 (2) a purchaser, other than a secured party, of the collateral takes
- 33 free of the security interest or agricultural lien to the extent that,
- 34 in reasonable reliance upon the incorrect information, the
- 35 purchaser gives value and, in the case of **tangible** chattel paper,
- 36 **tangible** documents, goods, instruments, or a security certificate,
- 37 receives delivery of the collateral.

38 SECTION 77. IC 26-1-9.1-601 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 601. (a) After default,
 40 a secured party has the rights provided in this section through
 41 IC 26-1-9.1-628 and, except as otherwise provided in IC 26-1-9.1-602,
 42 those provided by agreement of the parties. A secured party:

- 43 (1) may reduce a claim to judgment, foreclose, or otherwise
- 44 enforce the claim, security interest, or agricultural lien by any
- 45 available judicial procedure; and
- 46 (2) if the collateral is documents, may proceed either as to the
- 47 documents or as to the goods they cover.

48 (b) A secured party in possession of collateral or control of
 49 collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105,
 50 IC 26-1-9.1-106, or IC 26-1-9.1-107 has the rights and duties provided

1 in IC 26-1-9.1-207.

2 (c) The rights under subsections (a) and (b) are cumulative and
3 may be exercised simultaneously.

4 (d) Except as otherwise provided in subsection (g) and
5 IC 26-1-9.1-605, after default, a debtor and an obligor have the rights
6 provided in IC 26-1-9.1-601 through IC 26-1-9.1-628 and by agreement
7 of the parties.

8 (e) If a secured party has reduced its claim to judgment, the lien of
9 any levy that may be made upon the collateral by virtue of an execution
10 based upon the judgment relates back to the earliest of:

11 (1) the date of perfection of the security interest or agricultural
12 lien in the collateral;

13 (2) the date of filing a financing statement covering the
14 collateral; or

15 (3) any date specified in a statute under which the agricultural
16 lien was created.

17 (f) A sale pursuant to an execution is a foreclosure of the security
18 interest or agricultural lien by judicial procedure within the meaning of
19 this section. A secured party may purchase at the sale and thereafter
20 hold the collateral free of any other requirements of IC 26-1-9.1.

21 (g) Except as otherwise provided in IC 26-1-9.1-607(c),
22 IC 26-1-9.1-601 through IC 26-1-9.1-628 impose no duties upon a
23 secured party that is a consignor or is a buyer of accounts, chattel
24 paper, payment intangibles, or promissory notes.

25 SECTION 78. IC 32-31-4-5 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. If a tenant does not
27 claim the tenant's property within ninety (90) days after receiving
28 notice under section 3 of this chapter, a warehouseman may sell the
29 property received under this chapter under ~~IC 26-1-7-210(2).~~
30 **IC 26-1-7-210(b).**"

31 Renumber all SECTIONS consecutively.

(Reference is to SB 419 as printed February 7, 2007.)

Senator TALLIAN